Internal Revenue Service

Department of the Treasury

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▷ [redacted]

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Date: April 13, 2000

Dear [redacted]:

This is in response to your letter dated January 3, 2000, in which you requested clarification of fringe benefit issues for employer provided vehicles.

Your letter states that a state fire marshal and two assistants have offices located in a state office building and four field employees have offices located only in their homes. At least two of the office building employees and the four employees with home offices are permanently assigned state vehicles for business use only. You do not say whether the assigned state vehicles are clearly marked fire vehicles. Sometimes the office building employees are required to travel from their homes to the office more than one time on the same day, come in on holidays and weekends, and at other times must go to a fire scene to investigate without ever traveling to the office. The employees working from their homes often are required to travel to inspect buildings for fire safety or to investigate a fire.

While your letter asks several questions concerning these fact situations, you did not request a letter ruling under the procedure set forth in Rev. Proc. 2000-1, 2000-1 I.R.B. 4 (copy enclosed). Accordingly, we are able to provide general information only.

Section 61(a)(1) of the Internal Revenue Code (the "Code") provides that gross income means all income from whatever source derived, including (but not limited to) compensation for services, including fees, commissions, fringe benefits, and similar items, unless specifically excluded by law.

Section 132 provides in certain situations for employees to exclude from income the value of employer-provided vehicles. Section 1.132-5(h)(1) of the Treasury Regulations, in pertinent part, provides that 100 percent of the value of the use of a "qualified nonpersonal use vehicle" (as described in section 1.274-5T(k) of the Temporary Treasury Regulations) is excluded from gross income as a working condition fringe.

Sections 1.274-5T(k)(2)(ii) and 1.274-5T(k)(3) provide that "qualified nonpersonal use vehicles" include clearly marked police and fire vehicles. For example, a police or fire vehicle is clearly marked if, through painted insignia or words, it is readily apparent that the vehicle is a police or fire vehicle. A marking on a license plate is not a clear marking for this purpose.

Therefore, if an employee uses an employer-provided state vehicle which is a “qualified nonpersonal use vehicle”, the value of the vehicle is excluded from gross income as a working condition fringe. The following information may be helpful if an employee uses an employer-provided state vehicle which is not a “qualified nonpersonal use vehicle”.

Section 1.61-21(b)(1) provides that an employee must include in gross income the amount by which the fair market value of a fringe benefit exceeds the sum of (1) the amount, if any, paid for the benefit by or on behalf of the recipient, and (2) the amount, if any, specifically excluded from gross income by another section of the Code. Therefore, for example, if the employee pays fair market value for what is received, no amount is includible in the gross income of the employee. However, as a further example, if an employee only pays a flat amount which does not equal the fair market value for what is received, the employee must include in gross income the amount by which the fair market value of the fringe benefit exceeds the flat amount paid and the amount, if any, specifically excluded from gross income by another section of the Code. In general, the determination of the fair market value of a fringe benefit must be made before subtracting out the amount, if any, paid for the benefit and the amount, if any, specifically excluded from gross income by another section of the Code.

Section 132(a)(3) provides that gross income shall not include any fringe benefit which qualifies as a working condition fringe. Section 132(d) defines the term “working condition fringe” as any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 (trade or business expenses) or 167 (depreciation).

Section 1.132-5(a)(1)(ii) provides that the value of an employer-provided vehicle that is attributable to an employee’s business use of that vehicle is excludable from the employee’s income as a working condition fringe, provided the business use is adequately substantiated in accordance with § 274 and its regulations. See generally §§1.274-5T(e) and 1.274-6T(a). Section 1.132-5(b)(1)(i) provides that the working condition fringe exclusion for the use of an employer-provided vehicle is determined based upon substantiated business mileage. The value that is attributable to an employee’s personal use or unsubstantiated business use of such vehicle must be included in the employee’s gross income

Section 162 allows a deduction for all ordinary and necessary business expenses paid or incurred during the taxable year in carrying on any trade or business.

Section 262 and its regulations, however, provide that except as otherwise expressly provided, no deduction is allowed for personal, living, or family expenses, including the costs of commuting to the taxpayer’s place of business or employment.

Rev. Rul. 99-7, 1999-5 I.R.B. 4 (copy enclosed) provides, in general, that daily transportation expenses incurred in going between a taxpayer's residence and a work location are nondeductible personal commuting expenses. However, daily transportation expenses are deductible under the specific circumstances described in the ruling. For example, the ruling holds that if a taxpayer has one or more regular work locations away from the taxpayer's residence, the taxpayer may deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location in the same trade or business, regardless of the distance. The ruling also holds that if a taxpayer's residence is the taxpayer's principal place of business within the meaning of § 280A(c)(1)(A), the taxpayer may deduct daily transportation expenses incurred in going between the residence and another work location in the same trade or business, regardless of whether the other work location is regular or temporary and regardless of the distance. Under Section 280A(c)(1)(A) a residence may be considered the taxpayer's principal place of business if a portion of the dwelling unit is exclusively used on a regular basis as the principal place of business for any trade or business of the taxpayer. In the case of an employee, the exclusive use referred to in the preceding sentence must be for the convenience of his employer.

Thus, in general, the value of the use of a state vehicle for business purposes (including those trips described in Rev. Rul. 99-7 for which the taxpayer may deduct his or her expenses) is excluded as a working condition fringe, while the value of the use of the vehicle for personal purposes (including commuting) must be included in the employee's gross income.

Treasury regulations provide for the following three special rules for valuing employer-provided automobiles. Each rule has special requirements and conditions which must be met for the rule to be applicable. In general, section 1.61-21(d) of the Treasury regulations provides for the "automobile lease valuation rule" (lease value is taken from a table in the regulations); 1.61-21(e) of the Treasury regulations provides for the "vehicle cents-per-mile valuation rule" (personal miles included in income at fixed rate per mile); and, section 1.61-21(f) of the Treasury regulations provides for the "commuting valuation rule" ($1.50 included in income per one-way commute).

Section 1.61-21(b)(4)(i) of the Treasury regulations additionally provides that if the vehicle special valuation rules of sections 1.61-21(d), (e), and (f) of the Treasury regulations do not apply with respect to an employer-provided vehicle, the value of the availability of that vehicle is determined under the general valuation principles set forth in that section. In general, that value equals the amount that an individual would have to pay in an arm's length transaction to lease the same or comparable vehicle under the same or comparable conditions in the geographic area in which the vehicle is available for use.

Under the foregoing authorities and the general principles of Rev. Rul. 99-7, for each trip that an employee uses an employer-provided state vehicle (which is not a "qualified nonpersonal use vehicle") to commute between the residence and a work location, the value of the use of the vehicle for the commute is attributable to the employee's personal use of such vehicle and must be included in the employee's gross income. Consequently, an employee may have more than one commute on a particular day. The commuting valuation rule set forth in § 1.61-21(f) to determine the value of the commute may apply if the criteria described therein are satisfied. If however, for a particular trip, an employee satisfies the specific circumstances described in Rev. Rul. 99-7 (under which the employee incurred trip expenses that would be deductible), the transportation expenses incurred upon departing the residence are a working condition fringe, and the value of the use of the vehicle for that trip is excluded from the employee's gross income.

I hope the above information is helpful. If we may be of further assistance, please contact Elliot Rogers of my office at (202) 622-4920.

Sincerely,

Deputy Assistant Chief Counsel
(Income Tax & Accounting)

By _____
George Baker
Assistant to Branch Chief, Branch 2

Enclosure (2)